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ABSTRACT

Sexual harassment affects students at all levels of education. To combat this problem, fundamental information that can help school administrators, teachers, students, and parents recognize and deal with sexual harassment under Title IX are presented in this pamphlet. The text describes quid pro quo harassment and hostile-environment harassment, and outlines the basic principles of harassment in a question-and-answer format. These questions include: What are some examples of sexual conduct? Must sexual conduct be unwelcome in order to be sexual harassment? Does all sexual conduct create a sexually hostile environment? When does sexual conduct create a sexually hostile environment? What steps can a school take to prevent sexual harassment? What can a student do if he or she is confronted with sexual harassment? How should a school respond to information about alleged sexual harassment? What if the student who was harassed insists on confidentiality, or asks that the matter not be pursued? What should a school do if it determines that there has been sexual harassment? What should be included in a school's grievance procedures? What should a school do to publicize its policy against sexual harassment? and How does a student file a complaint to the Office of Civil Rights? (RJM)

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Sexual Harassment:

It's Not Academic

EA 029 401

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"First of all, let me say that being sexually harassed since 5th grade has gone beyond the damage of affecting the way I feel.... Now...I have no pride, no self-confidence, and still no way out of the [misery] I am put through in my school."[1]

SEXUAL HARASSMENT: IT'S NOT ACADEMIC

Sexual harassment of students is a *real* and serious problem in education at all levels, including elementary and secondary schools as well as colleges and universities. It can affect any student, regardless of sex, race, or age. Sexual harassment can threaten a student's physical or emotional well-being, influence how well a student does in school, and make it difficult for a student to achieve his or her career goals. Moreover, sexual harassment is illegal--Title IX of the Education Amendments of 1972 (Title IX) prohibits sex discrimination, including sexual harassment. Preventing and remedying sexual harassment in schools is essential to ensure nondiscriminatory, safe environments in which students can learn.

A...student should feel safe and comfortable walking down the halls of his or her school. School is a place for learning and growing. Sexual harassment stops that process.[2]

This pamphlet provides school administrators, teachers, students, and parents with fundamental information to assist them in recognizing and dealing with sexual harassment under Title IX. It outlines basic principles in question-and-answer format. Some more information about a school's responsibilities has been omitted, and school officials should read "Sexual Harassment

Guidance: Harassment of Students by School Employees, Other Students, or Third Parties" to ensure a full understanding of the law. Parents and students can also consult this Guidance for more information about student rights. The Guidance was published by the Office for Civil Rights in the Federal Register in **March of 1997** and may be obtained from any of the OCR Enforcement Offices listed at the end of this pamphlet or by calling 1-800-421-3481. It is also posted on OCR's web page at http://www.ed.gov/offices/OCR/ocrpubs.html .

Sexual harassment can occur at any school activity and can take place in classrooms, halls, cafeterias, dormitories and other areas. Too often, the behavior is allowed to continue simply because students and employees are not informed about what sexual harassment is or how to stop it. Students, parents and school staff must be able to recognize sexual harassment, and understand what they can do to prevent it from occurring and how to stop it if it does occur.

Harassing behavior, if ignored or not reported, is likely to continue and become worse, rather than go away. The impact of sexual harassment on a student's educational progress and attainment of future goals can be significant and should not be underestimated. As a result of sexual harassment, a student may, for example, have trouble learning, drop a class or drop out of school altogether, lose trust in school officials, become isolated, fear for personal safety, or lose self-esteem.

For these reasons, a school should not accept, tolerate or overlook sexual harassment. A school should not excuse the harassment with an attitude of "that's just emerging adolescent sexuality" or "boys will be boys," or ignore it for fear of damaging a professor's reputation. This does nothing to stop the sexual harassment and can even send a message that such conduct is accepted or tolerated by the school. When a school makes it clear that sexual harassment will not be tolerated, trains its staff, and appropriately responds when harassment occurs, students will see the school as a safe place where everyone can learn.

TITLE IX AND SEXUAL HARASSMENT

Title IX protects students from unlawful sexual harassment in all of a school's programs or activities, whether they take place in the facilities of the school, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere. Title IX protects both male and female students from sexual harassment, regardless of who the harasser is.

Sexual harassment can take two forms: **quid pro quo** and **hostile environment**.

Quid pro quo harassment occurs when a school employee causes a student to believe that he or she must submit to unwelcome sexual conduct in order to participate in a school program or activity. It can also occur when an employee causes a student to believe that the employee will make an educational decision based on whether or not the student submits to unwelcome sexual conduct. For example, when a teacher threatens to fail a student unless the student agrees to date the teacher, it is quid pro quo harassment.

> ***"Dear Beth: I'm 18 and in high school. I have this really cute math teacher....One day he asked me to a fancy restaurant to talk about my grades. He just kept telling me how beautiful I was and asked if I could come over to his house next week...he told me it would bring up my grades. I get very bad grades in math....What should I do?"***[1]

It does not matter whether the student refuses to submit to the teacher's demands and suffers the threatened harm, or does what the teacher wants and thus avoids the harm. In both cases, the harassment by the school employee is unlawful.

"The financial aid officer made it clear that I could get the money I needed if I slept with him."[4]

Hostile environment harassment occurs when unwelcome sexually harassing conduct is so severe, persistent, or pervasive that it affects a student's ability to participate in or benefit from an education program or activity, or creates an intimidating, threatening or abusive educational environment. A hostile environment can be created by a school employee,[5] another student,[6] or even someone visiting the school, such as a student or employee from another school.

Regardless of which type of harassment occurs, a school must take immediate and appropriate steps to stop it and prevent it from happening again. The judgment and common sense of teachers and administrators are important elements of any response. However, the school is responsible for taking all reasonable steps to ensure a safe learning environment.

"There were two or three boys touching me...and I'd tell them to stop but they wouldn't. This went on for...months. Finally I was in one of my classes when all of them came back and backed me into a corner and started touching me all over.... After the class I told the principal, and he and the boys had a little talk. And after the talk was up, the boys came out laughing because they got no punishment."[7]

Under federal law, a school is required to have a policy against sex discrimination and notify employees, students, and elementary and secondary school parents of the policy. A policy against sex discrimination, particularly one that specifically addresses sexual harassment, is an extremely important method for preventing

sexual harassment. Such a policy lets students, parents, and employees know that sexual harassment will not be tolerated.

If a school does not have a sexual harassment policy in place, students (and/or parents) can meet with the principal, dean, or other administrator to ask that he or she develop one. The students should remind the school official that the school has an obligation under the law to stop sexual harassment.[8]

A school is also required to adopt and publish grievance procedures for resolving sex discrimination complaints, including complaints of sexual harassment. Good procedures provide an effective means for promptly and appropriately responding to sexual harassment complaints. Finally, a school is required to have at least one employee responsible for coordinating efforts to comply with Title IX.

QUESTIONS AND ANSWERS

Q: What are some examples of sexual conduct?

A: Some examples of sexual conduct are:

- sexual advances
- touching of a sexual nature
- graffiti of a sexual nature
- displaying or distributing of sexually explicit drawings, pictures and written materials
- sexual gestures
- sexual or "dirty" jokes
- pressure for sexual favors
- touching oneself sexually or talking about one's sexual activity in front of others
- spreading rumors about or rating other students as to sexual activity or performance.

Not all physical conduct would be considered sexual in nature. Some examples are a high school athletic coach hugging a student who made a goal, a kindergarten teacher's consoling hug for a child with a skinned knee, or one student's demonstration of a sports move requiring contact with another student.

Q: Must sexual conduct be unwelcome in order to be sexual harassment?

A: Yes. Conduct is unwelcome if the student does not request or invite the conduct, and views it as offensive or undesirable. However, just because a student does not immediately speak out or complain does not mean that the sexual conduct was welcome. A student might feel that objecting would only result in increasing the harassing conduct. Sometimes, students feel intimidated by the conduct and/or feel too embarrassed, confused or fearful to complain or resist. Also, a student who willingly participates in conduct on one occasion may later decide that the same conduct on a subsequent occasion has become unwelcome.

It is difficult to say "no" to a teacher, coach...and the "popular" kids. A person who complains about sexual harassment is often rejected by other kids and labeled a troublemaker."

Both parents and school officials should encourage students to speak out and complain about unwelcome sexual conduct--to the harasser, to a school employee, or to a parent. Using age-appropriate methods, parents and school officials should let students know that they should not tolerate unwanted sexual conduct.

Q: Does all sexual conduct create a sexually hostile environment?

A: No. Although even one incident of quid pro quo harassment (for example, threatening to fail a student) is unlawful, generally, a hostile environment may be created by a series of incidents. So, for example, a sexual joke, even if offensive to the student to whom it was told, will not by itself create a sexually hostile environment. However, a sexual assault or other severe single incident can create a hostile environment.

Q: When does sexual conduct create a sexually hostile environment?

A: In order to answer this question several factors must be considered. Did the student view the environment as hostile? Was it reasonable for the student to view the environment as hostile? All relevant circumstances should be considered, including the following:

- the nature of the conduct
- how often the conduct occurred

- how long the conduct continued
- the age and sex of the student
- whether the conduct adversely affected the student's education or educational environment
- whether the alleged harasser was in a position of power over the student subjected to the harassment
- the number of alleged harassers
- the age of the alleged harasser
- where the harassment occurred
- other incidents of sexual harassment at the school involving the same or other students.

These thoughts and feelings are warning signals of sexual harassment. They can alert you to the possibility that you are being sexually harassed. Feelings: confused, guilty, helpless, angry, frightened, hopeless, scared and alone. Thoughts: I can't believe this is happening to me. Why Me? What did I do? I hate you for doing this. If I say anything, everyone will think I'm crazy.[10]

Q: What steps can a school take to prevent sexual harassment?

A: OCR's experience shows that the best way for a school to deal with sexual harassment is to prevent it from occurring. A school may take a number of steps to prevent harassment:

- develop and publicize a sexual harassment policy that clearly states sexual harassment will not be tolerated and that explains what types of conduct will be considered sexual harassment

- develop and publicize a specific grievance procedure for resolving complaints of sexual harassment
- develop methods to inform new administrators, teachers, guidance counselors, staff, and students of the school's sexual harassment policy and grievance procedure
- conduct periodic sexual harassment awareness training for all school staff, including administrators, teachers, and guidance counselors
- conduct periodic age-appropriate sexual harassment awareness training for students
- establish discussion groups for both male and female students where students can talk about what sexual harassment is and how to respond to it in the school setting
- survey students to find out whether any sexual harassment is occurring at the school
- conduct periodic sexual harassment awareness training for parents of elementary and secondary students
- work together with parents and students to develop and implement age-appropriate, effective measures for addressing sexual harassment.

Adoption of strong preventive measures is often the best way to confront the serious problem of sexual harassment. In addition, the steps described above may also be useful in responding to sexual harassment once it has occurred to ensure that it does not happen again.

Q: What can a student do if he or she is confronted with sexual harassment?

A: A student who believes he or she has been sexually harassed (or a parent who believes that his or her child has been harassed) should immediately report it to a responsible school official. This could be a teacher, principal, faculty member, administrator,

campus security officer, affirmative action officer, staff in the office of student affairs or the school's Title IX coordinator.[11]

If the student feels comfortable doing so, the student should let the harasser know that he or she does not welcome the conduct and wants it to stop.

> ***"A guy in my chem class kept following me around, staring at me, and asking me out. At first, I told him I was busy, or not feeling well. Eventually, it got so bad that I just had to tell him that I didn't want to go out with him, period...and, once I told him, he stopped! And, if he hadn't, I knew exactly who to report it to!"***[12]

A student may also file a complaint with the school or with OCR, as explained below.

Q: How should a school respond to information about alleged sexual harassment?

A: If a school receives information that sexual harassment may have occurred, the school should move quickly to determine what happened. When a student or parent reports sexual harassment, the school should explain how its grievance procedures work and offer the student or parent the opportunity to use them.

This does not mean that every school employee who learns that harassment may have occurred is directly responsible for finding out what happened, or for taking steps to end any harassment and prevent its recurrence. However, the school should have procedures in place that clearly define each employee's responsibilities. For example, a school could decide that certain employees are only required to report evidence or claims of possible harassment to other school officials (for example, a principal, dean, or Title IX coordinator) who have the

responsibility to take appropriate action. The important thing is that something be done and that the school take steps to find out the facts.

Sometimes a school may need to take interim measures before the investigation is concluded. These steps may include reporting the incident to law enforcement officials, separating the students, or allowing the person claiming harassment to transfer to another class.

Regardless of how a school finds out about possible harassment, it should make every effort to prevent public disclosure of the names of all parties involved, except to the extent necessary to find out what happened. When looking into the matter, particularly where a grievance is filed, the school should pay attention to any due process or other rights the accused student or teacher might have. However, the school should make sure that doing so does not interfere with the protections provided to the complainant by Title IX.

Finally, it is extremely important for a school to make certain, to the best of its ability, that no harm comes to a student for reporting incidents of sexual harassment. The school should take steps to prevent any retaliation by the alleged harasser or anyone else at the school. The school should tell the student that Title IX prohibits retaliation and reassure the student that the school will take strong responsive actions if it occurs.

Q: What if the student who was harassed insists on confidentiality, or asks that the matter not be pursued?

A: Sometimes, a student complaining of harassment may ask that his or her name not be used by the school in its investigation. Similarly, a student may even ask that the school take no action. In these situations, a school's ability to deal with the alleged harassment may be limited. However, a school may still be able to take some steps to address the matter. For example, a school should, at a minimum, report a sexual assault or other possible

criminal activities to the police, even without a complaint from the student. Indeed this may be required by state or local laws. In other, less severe cases, the school should at least keep track of the incident so that it can identify and take action against repeat offenders.

However, when faced with a request for confidentiality or to take no action, the school must consider whether the alleged harassment may affect other students. If so, the school may need to take action to prevent those students from being harassed.

Q: What should a school do if it determines that there had been sexual harassment?

A: If a school finds out that there has been sexual harassment, it has an obligation to stop it and make sure that it does not happen again. This includes ending any quid pro quo harassment, eliminating a hostile environment if one has been created, preventing the harassment from occurring again and, when appropriate, correcting its effects on the student who had been harassed.

The judgment and common sense of teachers and school administrators are very important elements of any response to sexual harassment, especially when dealing with very young children. For example, an appropriate response to unwanted sexual touching of an older student by another may be suspension. Where very young children are involved, however, a teacher or administrator may decide that the best way to deal with the situation would be through a discussion of respect for others, including not touching them inappropriately.

Q: What should be included in a school's grievance procedures?

A: The regulations issued by OCR under Title IX require schools to have grievance procedures applying to all forms of sex discrimination. While a school does not have to have procedures

specifically addressing sexual harassment, such procedures are often the most effective way of preventing and dealing with this unique problem.

In any event, a school's grievance procedures should:

- give notice of the procedure, including where complaints can be filed, to students, parents of elementary and secondary students, and employees
- assign an impartial investigator to the complainant, and give the parties involved the opportunity to present witnesses and other evidence
- set time frames for the major stages of the complaint process
- give notice to the parties of the outcome[13] of the complaint
- give an assurance that the school will take steps to prevent recurrence of any harassment and that it will correct its discriminatory effects on the complainant and others, where appropriate.

Although not required by Title IX, many schools find that their grievance procedures can be more effective if the procedures:

- provide an opportunity to appeal the findings and/or remedy
- prohibit retaliation for filing a complaint or participating in an investigation or inquiry
- include a voluntary and informal means for resolving complaints
- keep students informed of the status of their complaints.

The students have to know that if they decide to take some course of action, it's not going to be wasted time....If you take the risk to make a complaint, [that] it's going to be listened to...taken seriously and [that the institution is] going to follow through on it...and be very serious about it.[14]

Q: What should a school do to publicize its policy against sex discrimination and it's grievance procedures?

A: The school should make sure that its policy and grievance procedures are widely distributed and easily understood by students, parents of elementary and secondary students, and employees. Steps a school can take are:

- publish the policy and grievance procedures as separate documents and make copies available at various locations throughout the school
- include the policy and a summary of the procedures in the school's major publications
- identify individuals who can explain how the procedures work
- designate an employee with in-depth knowledge of sexual harassment and the school's grievance procedures as the Title IX coordinator.

Q: How does a student file an OCR complaint?

A: If a student or a student's parent or other representative decides to file a complaint with OCR, the complaint should be filed with the OCR enforcement office responsible for the state in which the school is located. OCR enforcement offices are listed at the end of this pamphlet. Generally, the complaint should be filed within 180 days of the last act of alleged discrimination.

The student should give OCR his or her name, address, and daytime phone number, and provide the date(s) and enough information about the alleged incident(s) so that OCR can understand the nature of the complaint.

OCR may extend the time for filing a complaint in certain circumstances, e.g., when a student files a grievance under school procedures within 180 days of the last act of alleged discrimination. Because OCR encourages the use of school grievance procedures, OCR will generally accept a complaint raising the same allegations up to 60 days after the end of the procedure. OCR case resolution would usually then be limited to the allegations raised in the grievance.

Conclusion

OCR is the federal agency that ensures that schools comply with Title IX. Students should contact one of the offices listed at the end of this pamphlet to receive information about filing a complaint. Schools should also contact one of these offices for technical assistance. For additional copies of this pamphlet or the Guidance, contact one of these offices or call the OCR Customer Service Team at (800) 421-3481.

ENDNOTES

1. Stein, Nan, Marshall, L. Troop, R., Harassment in the Halls (Massachusetts: Center for Research on Women, Wellesley College, 1993) 7. Most of the quotes contained in this pamphlet are from real life situations. These situations may or may not constitute unlawful sexual harassment, depending on all of the facts in each particular case. The perspectives reflected are intended to raise the awareness of students, school officials, and parents and indicate when it may be time to become concerned, speak up, and/or gather more information to determine an appropriate course of action.

2. Stein, N. & Sjostram, Lisa, Flirting or Hurting? A Teacher's Guide on Student to Student Sexual Harassment in Schools (Washington, D.C.: NEA Professional Library Publication, 1994) 66.

3. Winship, Beth, "Ask Beth" (San Francisco Chronicle, March 2, 1997).

4. Miranda, L., & Associates, Inc., interviews (1981).

5. Although sexual harassment of employees may violate Title IX, this pamphlet addresses only sexual harassment of students.

6. In Texas, Mississippi, and Louisiana, Title IX's prohibition on sexual harassment of one student by another has been affected by a federal decision covering these states. If you live in one of these states and have been harassed or seek further information, please contact OCR's Dallas office for clarification.

7. Stein, Harassment 10.

8. Stein, Flirting 8.

9. Strauss, S., Sexual Harassment of Teenagers: It's Not Fun/It's Illegal (Minnesota Department of Education, 1981) 35.

10. Morris, B., Terpstra, T., Croninger, B., Linn, E. Tune In To Your Rights (Ann Arbor: University of Michigan, 1985) 8.

11. In Texas, Mississippi, and Louisiana, reporting sexual harassment by a school employee to a classroom teacher may not be considered adequate notification, according to a federal court decision. In these states, a student should report sexual harassment by a school employee to another staff person with authority over the employee or other high-level officials. If you live in one these states and have been harassed or seek further information, please contact OCR's Dallas office for clarification.

12. This quote is a composite drawn from different OCR cases.

13. The Federal Educational Rights and Privacy Act of 1974, often known as the Buckley Amendment, imposes certain restrictions on a school's release of information contained in a student's education record. For more information, see OCR's Sexual Harassment Guidance or call the Family Policy Compliance Office, U.S. Department of Education, Washington, D.C. 20202-4605, at (202) 260-3887.

14. Miranda.

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